

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6535 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL  
and

MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DAVE SURESHKUMAR PITAMBERDAS

Versus

AMRELI DISTRICT PANCHAYAT

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Appearance:

MR PM RAVAL for Petitioners

MR HS MUNSHAW for Respondent No. 1, 2

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE S.D.DAVE

Date of decision: 19/09/96

ORAL JUDGEMENT (per B.C. Patel, J.)

The petitioners by this petition have prayed for issuance of writ, order or direction, directing the respondents to operate and to make appointment from the select list prepared pursuant to the advertisement dated 5th December 1983.

The facts giving rise to the present proceedings are as under:

The respondent no.1-District Panchayat invited applications for the post of Panchayat Secretary, by publishing an advertisement in "Gujarat Rojgar Samachar", on 5th December 1983, a copy of which is annexed to the petition at Annexure.A. The petitioners applied for the said post and they were called for the written test on 21st October 1984. It is averred in the petition that, after declared as successful in the written test, they were called for oral interview. Out of the candidates called for the written test and interview, the respondent authorities selected 202 candidates and the petitioners were informed about their success in the examination. 28 candidates were appointed out of the said select list on or about 20th June 1985 and 14 candidates were appointed during the year 1986-87. It is averred in the petition that, thereafter 20 candidates out of the said select list were appointed during the same year. The last 23 appointments were made out of the said select list on or about 1st December 1988 and thus, out of the 202 candidates, 85 candidates have been appointed as "Gram Panchayat Secretary." It is averred by the petitioners that 117 successful candidates are not given appointment and the select list is in existence and is operative.

It is the say of the petitioners that in spite of the aforesaid select list available for making appointments, the respondent no.1 by advertisement dated 27th August 1989, in "Fulchhab" newspaper, invited applications for the post of Talati-cum-Mantri. It is the case of the petitioners that the when the select list prepared consequent to the advertisement dated 5th December 1983 is in existence, the advertisement published on 27th August 1989 inviting applications for the post of Talati-cum-Mantri is bad in law and, that the appointments should be made only from the select list prepared in pursuance to the advertisement dated 5th December 1983 published in "Gujarat Rojgar Samachar".

From advertisement No.36:83-84, at Annexure.A to the petition, it appears that, the applications were invited for 50 vacancies so as to reach the Selection Committee, District Panchayat Service Selection Committee, Amreli, on or before 31.12.1983. That advertisement refers to different categories; such as, 25 vacancies for non-reserved category, 4 vacancies for Scheduled Castes, 16 vacancies for Scheduled Tribes, and 5 vacancies for Baxi Panch, while the advertisement which

is published in 1989 is only for 13 vacancies from the candidates belonging to Scheduled Tribes.

In reply to the petition, Mr. K.B.Buch, District Development Officer, Amreli Jilla Panchayat, has filed an affidavit, pointing out that, for 50 posts, the select list comprising 202 candidates was prepared and in all, 85 candidates have been selected from the said select list. The posts reserved for Scheduled Castes and Baxi Panch were filled in, however, the candidates from Scheduled Tribes were not selected. It is pointed out that, there was a backlog of 49 posts so far as the reservation pertaining to the Scheduled Tribes candidates is concerned. As posts meant for the candidates belonging to Scheduled Tribes were to be filled in and as 13 posts were vacant, it was decided to fill in the said 13 posts and it is under these circumstances, the advertisement came to be published in the newspaper on 27th August 1989 inviting applications from candidates belonging to Scheduled Tribes for the said 13 vacancies for the post of Talati-cum-Mantri. The contentions raised in the affidavit-in-reply are not controverted by the petitioners and, therefore, it is very clear that the advertisement published inviting applications for the 13 posts from Scheduled Tribes cannot be said to be bad in law, as it was the duty of the respondent-authorities to see that as per quota, the candidates are selected and appointed.

On behalf of the respondents, it is also contended that, for 50 posts, a list of 202 candidates was prepared. The candidates wait-listed at the relevant time were for 50 posts and the petitioners cannot have any claim over the posts which might have fallen vacant in 1989. It is required to be noted that, as contended by the respondents that, with a view to clear the backlog of 49 posts reserved for Scheduled Tribes, applications were invited from the candidates from the Scheduled Tribes.

We find no merits in the contentions raised by the petitioners. So far as the list of 202 candidates is concerned, it is required to be noted that it is not co-terminous with the post and we have considered this question of preparing lengthy wait-list, in Special Civil Application No.6636 of 1989 which has been decided by us on 14th September 1996. After following the two judgments delivered by the Apex Court in the cases of: (1) STATE OF BIHAR vs. SECRETARIAT ASST. SUCCESSFUL EXAMINEES' UNION, 1985, reported in AIR 1994 SC 736, and (2) STATE OF BIHAR vs. MADAN MOHANSINH, reported in AIR

1994 SC 765, we have held that such lengthy list is nothing, but, an arbitrary exercise by the authority in so far as it exceeds the number of vacancies notified by the Department and, therefore, for the reasons recorded in the aforesaid judgment, the petitioners cannot have any claim and cannot insist that they should be appointed. It is the duty of the respondents to strictly follow the Rules of 1987 and appointment should be made only after following the procedure as laid down in the Rules. Under the aforesaid circumstances, we find no merits in this petition and the same is, therefore, dismissed. Rule is discharged with no order as to costs. The interim relief shall stand vacated.

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